

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO: 5:20-CV-00385-M

JUDSON WITHAM,)
Plaintiff,)
v.)
UNITED STATES GOVERNMENT,)
JUDGE TERRANCE BOYLE,) ORDER
DEC NEW YORK STATE,)
STATE OF NEW YORK,)
GOVERNOR ANDREW CUOMO,)
BASIL SEGGOS, DEC Commissioner,)
STATE OF NORTH CAROLINA,)
WARREN COUNTY NEW YORK,)
THE LAKE GEORGE COMMISSION,)
NEW YORK STATE CONSERVATION COM,)
STATE OF VERMONT,)
Defendants.)

Before the Court is a Memorandum and Recommendation (“M&R”) issued by Magistrate Judge Robert B. Jones on October 5, 2020 (DE 6) and Plaintiff’s Motion to Consolidate (DE 5). In the M&R, Judge Jones recommends that this Court dismiss Plaintiff’s Complaint. Plaintiff timely filed an objection to the M&R on October 16, 2020 and filed a supplemental objection on November 12, 2020. The Fourth Circuit instructs:

The Federal Magistrates Act requires a district court to make a de novo determination of those portions of the magistrate judge’s report or specified proposed findings or recommendations to which objection is made. By contrast, in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.

Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation marks, brackets, emphases, and citations omitted); *see* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72.

Typically, in light of the objections filed by the Plaintiff, the Court would conduct a de novo review of Judge Jones' recommendation to dismiss the Complaint. However, due to an apparent filing error involving this case, this Court issued an order in 5:20-cv-00446-M deeming all documents filed in that case as filed in this case. Because the posture of the cases renders possible an incomplete record in this case at the time Judge Jones issued his M&R, the Court will decline to adopt the M&R and resubmit the matter to Judge Jones for his consideration and recommendation of the disposition of the matter. In addition, the Court's order closing the matter in 5:20-cv-00446-M renders moot the Plaintiff's motion to consolidate filed in this case.

Accordingly, the court DECLINES TO ADOPT the M&R and DIRECTS the Clerk of the Court to resubmit this matter to Magistrate Judge Jones, who shall consider the documents filed in 5:20-CV-00446-M as if they were originally filed in this case. All future filings shall be made solely in this case. In addition, the Court DENIES Plaintiff's motion to consolidate [DE 5] as moot.

SO ORDERED this 8th day of January, 2021.


RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE